

No. 14557

**United States
Court of Appeals
For the Ninth Circuit.**

COLONIAL TRUST COMPANY,

Appellant.

vs.

GEORGE GOGGIN, Trustee in Bankruptcy of the
Estate of Intercontinental Airways, Inc.,

Appellee.

Transcript of Record

**Appeal from the United States District Court for the
Southern District of California,
Central Division.**

FILED

JAN 26 1955

PAUL P. O'BRIEN,

CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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For Appellee:

CRAIG, WELLER & LAUGHARN,

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Los Angeles 14, Calif.

In the District Court of the United States for the
Southern District of California, Central Division

In Bankruptcy No. 59643-HW

In the Matter of:

INTERCONTINENTAL AIRWAYS, INC., a Corporation,

Alleged Bankrupt.

CREDITORS' INVOLUNTARY PETITION

To the Honorable Judges of the District Court of
the United States, for the Southern District of
California:

The verified petition of Coast Pro-Seal & Mfg. Co., Inc., a California Corporation; Air Parts, Inc., a California corporation, and California Mill Supply Corporation, a California corporation, doing business as California Waste and Wiper Co., respectfully represents:

I.

That the alleged bankrupt, Intercontinental Airways, Inc., has had its principal place of business at Lockheed Air Terminal, Burbank, California, and within the Southern District of California and within the jurisdiction of the District above named for a period of the greater portion of the six months immediately preceding the filing of this petition, and that said alleged bankrupt is not a municipal, railroad, insurance or banking corporation, or a building and loan association, but is engaged in the

business of selling airplane parts and other allied lines. [2*]

II.

That your petitioners are creditors of the above-named alleged bankrupt and hold provable claims against it, fixed as to liability and liquidated as to amount, amounting in the aggregate in excess of the value of securities held by it to the sum of more than \$500.00. [3]

* * *

IV.

Your petitioners allege that the alleged bankrupt is insolvent and that within four months preceding the filing of this petition, the alleged bankrupt committed an act of bankruptcy in that while insolvent it suffered or permitted a creditor to obtain a lien upon its property and permitted a judicial sale thereof to be set, and failed to have such lien vacated or discharged within five days before the date set for such sale, or other disposition of such property, and that the lien so placed on the said property, is a lien of the County of Los Angeles for taxes, and that the sale of the said property for said taxes is set for February 4, 1954, at 10 o'clock a.m. of said day, and that your petitioners are informed and believe that said alleged bankrupt while insolvent and within four months preceding the filing of this petition committed other and further acts of bankruptcy, in that it transferred portions of its property to one or more of its creditors with the

*Page numbering appearing at foot of page of original Certified Transcript of Record.

intent to prefer such creditors over its other creditors, and your petitioners are informed and believe that the effect of such transfers to said creditors has been to prefer such creditors over its other creditors.

Wherefore your petitioners pray that service of this petition, together with a subpoena, be made upon said alleged bankrupt as provided in the Acts of Congress relating to bankruptcy, [4] and that it may be adjudged by this court to be a bankrupt within the purview of this Act.

Dated: February 3, 1954.

COAST PRO-SEAL & MFG. CO.,
INC.,

By /s/ FRANK C. WELLER,
Its Authorized Agent.

AIR PARTS, INC.,

By /s/ FRANK C. WELLER,
Its Authorized Agent.

CALIFORNIA MILL SUPPLY CORPORATION,
d/b/a CALIFORNIA WASTE AND WIPER
CO.,

By /s/ FRANK C. WELLER,
Its Authorized Agent.

CRAIG, WELLER &
LAUGHARN,

By /s/ C. E. H. McDONNELL,
Attorneys for Petitioning
Creditors.

OATH TO PETITION

United States of America,
Southern District of California,
County of Los Angeles—ss.

Frank C. Weller, being first duly sworn, deposes and says that he is the authorized agent for the petitioners named in the foregoing petition; that the statements made in the foregoing petition subscribed by him are true except as to matters stated therein on information and belief, and as to those matters he believes them to be true.

/s/ FRANK C. WELLER.

Subscribed and sworn to before me this 3rd day of February, 1954.

[Seal] /s/ C. W. ROBINSON,

Notary Public in and for Said
County and State.

[Endorsed]: Filed February 3, 1954. [5]

[Title of District Court and Cause.]

ORDER OF GENERAL REFERENCE

At Los Angeles, California, in said district on the 3rd day of February, 1954;

Whereas, a petition was filed in this court on the 3rd day of February, 1954, against Intercontinental Airways, Inc., a corp., alleged bankrupt above

named, praying that it be adjudged a bankrupt under the Act of Congress relating to bankruptcy, and good cause now appearing therefor;

It is ordered that the above-entitled proceeding be, and it hereby is, referred to Reuben G. Hunt, Esq., one of the referees in bankruptcy of this court, to take such further proceedings therein as are required and permitted by said Act, and that the said Intercontinental Airways, Inc., a corp., shall henceforth attend before said referee and submit to such orders as may be made by him or by a judge of this court relating to said bankruptcy.

/s/ HARRY C. WESTOVER,
District Judge.

[Endorsed]: Filed February 3, 1954. [6]

[Title of District Court and Cause.]

APPROVAL OF DEBTOR'S PETITION AND
ORDER OF REFERENCE UNDER SEC-
TION 321, CHAPTER XI, OF THE BANK-
RUPTCY ACT

At Los Angeles, in said District, on April 1, 1954, before the said Court the petition of Intercontinental Airways, a corporation, that he desires to obtain relief under Section 321 of the Bankruptcy Act, and within the true intent and meaning of all the Acts of Congress relating to bankruptcy, having

been heard and duly considered, the said petition is hereby approved accordingly.

It is thereupon ordered that said matter be referred to Reuben G. Hunt, Esq., one of the referees in bankruptcy of this Court, to take such further proceedings therein as are required by said Acts; and that the said Intercontinental Airways, a corporation, shall attend before said referee on April 9, 1954, and at such times as said referee shall designate, at his office in Los Angeles, California, and shall submit to such orders as may be made by said referee or by this Court relating to said matter.

Witness, the Honorable Ben Harrison, Judge of said Court, and the seal thereof, at Los Angeles, in said District, on April 1, 1954.

EDMUND L. SMITH,
Clerk.

By /s/ [Indistinguishable.]
Deputy Clerk.

[Endorsed]: Filed April 1, 1954. [7]

[Title of District Court and Cause.]

PETITION OF RECLAMATION OF
PROPERTY

The petition of Colonial Trust Company, a New York corporation, respectfully alleges:

I.

An involuntary petition in bankruptcy has been filed against the above-named alleged bankrupt and

George T. Goggin is the duly and qualified and acting Receiver in said proceedings.

II.

Prior to the filing of said involuntary petition in bankruptcy herein, this petitioner was and has continued to be the owner of a certain aircraft, including the engines, propellers and all appurtenances and accessories of said aircraft including the flight manual for said aircraft. Said aircraft is registered with the Civil Aeronautics Administration and carries a Registration Certificate of Airworthiness, Number N-53472, which Certificate of Registration was issued December 3, 1951, and bears Serial No. 2932. The aforesaid certificate shows Petitioner to be the owner of said [8] aircraft. Said craft is a Curtiss-Wright C-46 E, 54-passenger two-engine aircraft.

III.

All of the aforesaid property is now in the possession of said Receiver in bankruptcy.

IV.

Neither the alleged bankrupt nor the Receiver have any right, title or interest in and to the said property or any claim thereto, or any lien thereon.

V.

Demand has been made on the alleged bankrupt and upon the Receiver for the return of said property, but each has refused and failed to comply

with such demand and continues to deny petitioner possession of said property.

Wherefore, your petitioner prays that George T. Goggin, the said Receiver herein, be directed to surrender possession to your petitioner of the said property hereinabove described and that your petitioner have such other and further relief as is just and equitable in the premises.

COLONIAL TRUST COMPANY,
INC., a New York Corporation,

By /s/ H. SPRINGER,
Vice President.

OVERTON, LYMAN, PRINCE
& VERMILLE,

By /s/ DAN BRENNAN,
Attorneys for Colonial Trust
Company.

Duly Verified.

[Endorsed]: Filed March 11, 1954. Referee. [9]

[Title of District Court and Cause.]

ANSWER TO PETITION OF RECLAMATION
OF PROPERTY OF COLONIAL TRUST
COMPANY

Comes now George Goggin by and through his attorneys of record, Craig, Weller & Laugharn, and in response to the "Petition of Reclamation of Property" of the Colonial Trust Company, admits, alleges and denies as follows:

I.

Admits the allegations contained in paragraphs I, II, III and V.

II.

Denies both generally and specifically each, every and all of the allegations contained in paragraph IV of the said petition.

For a Further Separate and Affirmative Defense,
Alleges as Follows:

I.

That the said aircraft was delivered to the alleged bankrupt herein on or about July 30, 1953, by Air America, lessee, from the petitioner herein of the said aircraft.

II.

That on or about July 30, 1953, the alleged [13] bankrupt and the said Air America entered into an oral agreement whereby the alleged bankrupt was to perform on the said aircraft certain maintenance, installations and repair necessary to place the plane in operating condition and to comply with the requirements and specifications of the Civil Aeronautics Administration which had grounded the aircraft until the said work had been performed.

III.

That thereafter in accordance with the said agreement, the alleged bankrupt herein did perform the agreed installations, repair and maintenance and billed the said Air America as follows:

Invoice dated August 31, 1953, for installation of two Shot CO ₂	\$ 3,352.50
Invoice dated August 31, 1953, for repair of corrosion and installation of new toilets and other maintenance and repair work	6,013.03
Invoice dated November 20, 1953, for removing two aircraft engines and working off "flight squawks".....	1,478.06
Total.....	<u>\$10,843.59</u>

IV.

That the invoice dated November 20, 1953, as set forth hereinabove was inadvertently and erroneously billed to U. S. Airlines, who had previously been the lessee on the said plane, but your respondent is informed and believes and therefore alleges had returned the said aircraft to the possession of Air America, prior to the making of the oral contract and the delivery of the aircraft on or about July 30, 1953.

V.

That your respondent is informed and believes and therefore alleges that after the completion of the said work the said aircraft involved in this petition was stored with and remained in [14] the possession of the alleged bankrupt herein; that on or about September 4, 1953, the date of the completion of the work requested about it, the said storage began to run at the rate of \$50.00 per day and an invoice was issued to U. S. Airlines in the amount

of \$2,850 for the storage for the period of September 4, 1953, through October 30, 1953; that the said billing to U. S. Airlines was erroneously made since the said U. S. Airlines had surrendered the said aircraft to Air America, prior to the making of the oral contract herein and the delivery of the craft to the alleged bankrupt on or about July 30, 1953; that thereafter an invoice was issued to Air America in the amount of \$3,100 covering the storage at the rate of \$50 per day from October 31, 1953, through December 31, 1953; that the said rate of storage continued against the said ship thereafter and that this alleged bankrupt estate should be reimbursed and is due storage at the rate of \$50 per day, from and after December 31, 1953, to the date of any release of this aircraft to the petitioner or any other person herein.

VI.

That the respondent herein has a lien on the said aircraft for the work performed on it in the amount of \$10,843.59 and also in the amount of \$10,400, for storage of the said aircraft.

Wherefore, your respondent prays that the release prayed for in the petition herein be denied by this court, and this court make an order fixing and determining that the alleged bankrupt herein has a lien in the amount of \$10,843.59 for work, maintenance and services performed on the said aircraft and in the amount of \$10,400, for the storage thereof from and after September 4, 1953, which lien

shall attach to the aircraft and that the aircraft shall not be delivered or returned to the petitioner herein, or any other [15] person unless and until such time as the said sum represented by the lien is paid.

GRAIG, WELLER &
LAUGHARN,

By /s/ C. E. H. McDONNELL,
Attorneys for Receiver.

Duly verified.

[Endorsed]: Filed March 30, 1954, Referee. [16]

[Title of District Court and Cause.]

MEMORANDUM OPINION ON PETITION
FOR RECLAMATION OF PROPERTY ON
WHICH TRUSTEE CLAIMS A LIEN

Petition for reclamation by Colonial Trust Co., a corporation, to recover possession of a certain airplane in the possession of the Receiver in Bankruptcy, and his answer thereto claiming a lien for repairs on said airplane in the amount of \$10,843.59, and a lien for certain storage charges.

Overton, Lyman, Prince & Vermille, Attorneys for Petitioner.

Craig, Weller & Laugharn, Attorneys for Receiver.

I.

Statement of the Case

This is an involuntary bankruptcy case commenced Feb. 3, 1954. On that date George Goggin

was appointed and qualified as Receiver in Bankruptcy. On March 11, 1954, Colonial Trust Co. filed its petition to reclaim a certain airplane in possession of the bankrupt at the date of bankruptcy and now in the possession of the Receiver, upon the ground that it was the owner thereof and the bankrupt estate did not have any interest therein. On March 30, 1954, the Receiver filed an answer to [18] said petition in which he admitted title in the petitioner but asserted that the plane should not be turned over to it until it paid to the estate the sum of \$10,843.59 for repairs made upon said plane by the bankrupt, and storage charges thereon from Sept. 4, 1953, at the rate of \$50.00 per day until paid, and prayed for an order declaring a lien upon the plane for said repairs and charges. A hearing was held before the Referee and the matter submitted to him for decision.

II.

Statement of the Evidence

Colonial Trust Co., under date of Aug. 30, 1951, leased the airplane to American Airways, Inc., a corporation, pursuant to a written agreement, which provided that the lessee should keep the plane in good repair at its own expense. While the plane was in use by American Airways the Civil Aeronautics Authority of the United States, pursuant to Title 49, Sec. 555 of the U. S. Code, caused the plane to be grounded for repairs. The American Airways complied with this order and placed the plane with the bankrupt for the needed repairs. The bill for the same was \$10,843.59. The completed repairs were ap-

proved by the U. S. Civil Aeronautics Authority. No evidence was presented to show that the repairs, or any of them, were unnecessary, or that the charges were unreasonable, or that the plane had not been benefitted by the repairs to the extent of the amount charged. The bankrupt corporation knew who held the legal title to the plane, but did not notify the Colonial Trust Co., of the contemplated repairs or get its written consent for the making of the repairs. The repairs were completed on Sept. 4, 1953. It was customary for the bankrupt, after completing repairs on an airplane, to make a storage charge until the airplane was removed from its [19] premises.

III.

Question Presented

The sole question presented is whether there is any basis, legal or equitable, for the liens claimed by the Receiver.

IV.

Comment on the Law

There does not appear to be any basis for a legal lien, since the provisions of Secs. 1208.61 and 1208.62 of the Cal. Code of Civil Procedure were not followed. No notice was given to the owner and no consent was obtained from it authorizing the repairs. Petitioner contends that under these sections the most the lien can be is \$250.00 and the bankruptcy court cannot impose a larger one.

But the question remains whether or not this Court may impress an equitable lien upon the plane, even though the legal lien could not exceed \$250.00.

Courts of bankruptcy are essentially courts of equity (in re Loose SD. Cal., 52 F. S. 20, 54 ABR, NS, 786; Stegman v. Knudsen, CCA. 9, 152 F. (2) 871), at least in the sense that in the exercise of the jurisdiction conferred upon them by the Bankruptcy Act they apply the principles and rules of equity jurisprudence (in re L. A. Lumber SD, Cal. 46 F. S. 77); in re E. C. Denton Stores, ND, Ohio, 5 F. S. 307, 24 ABR, NS, 396.

Equity will use its extraordinary powers to the end that justice may be done in each individual case presented. Pugh v. Phelps, 19 P. (2) 315, 37 N. M. 126. A court of equity acts only when and as conscience commands, and if the conduct of the plaintiff be offensive to the dictates of natural justice, then, whatever be the rights he possesses and whatever use he may make of them in a court of law, he will be held remediless in a court of equity. Deweese v. Reinhard, 165 U. S. 386, 17 S. Ct. 340. [20]

One of the maxims of equity is that he who seeks equity must do equity. This maxim is applicable to bankruptcy proceedings. Litzke v. Gregory, CCA, 8, 1 F. (2) 112, 4 ABR, NS, 668; in re E. C. Denton Stores, ND, Ohio, 5 F. S. 307, 24 ABR, NS, 396; Stewart v. Ganey, CCA, 5 116 F. (2) 1010, 44 ABR, NS, 199; in re Lilyknit Silk Underwear, CCA, 2, 73 F. (2) 52, 26 ABR, NS, 662; Searle v. Mechanics

Loan and Trust, CCA, 9, 249 F. 942, 41 ABR 786. On seeking equitable relief, petitioner must be prepared to concede every equitable right to which his adversary is entitled. *Cityco Realty v. Slaysman*, 153 Atl. 278, 160 Md. 357; *Hammock v. Oakley*, 154 So. 906, 228 Ala. 588; *Fritz v. Bowcock*, 178 N. E. 375, 346 Ill. 111; *O'Brien v. O'Brien*, 197 C. 577, 241 P. 861. Equitable principle that "he who seeks equity must do equity" applies in respect to equitable terms imposed as a condition precedent to equitable relief. *Jones v. McGonigle*, 37 S. W. (2) 892, 327 Mo. 457; *Milanko v. Austin*, 241 S. W. (2) 881, 362 Mo. 357.

When a litigant goes into equity, the Court may refuse its aid to enforce an unconscionable demand, since he who seeks equity must do equity. *Mayfield v. British & American Mortgage*, 88 S. E. 370, 104 S. C. 152. What the petitioner is endeavoring to do here is to quiet title to the plane: a proceeding in equity. (*Benson v. Shotwell*, 87 C. 49, 25 P. 249.) And title to personal property may be quieted. Cal. Code Civ. Proc., Sec. 738. Equity, in quieting title to property, will not deny compensation for expenditures made in improving or preserving the property. *Warner v. Tullis*, 218 NW. 575, 206 Ia. 680; *Tutt v. Van Voast*, 36 C. A. (2) 282, 97 P. (2) 869; 74 C. J. S. 153, and cases cited. Likewise when a mortgagor seeks to set aside a foreclosure sale. *Young Mines v. Sevringhaus*, 298 P. 628, 38 Ariz. 160. [21]

Equity will not enforce a technical legal right (such as that asserted here by petitioner) to the unconscionable injury of the other party. *U. S. v. Dug-*

gan, CCA, 8, 210 F. (2) 926. Equity will protect the equitable rights of the adversary arising on his answer, regardless of the nature of the relief sought by the petitioner. *Fidelity Union Trust v. Multiple Realtys Construction*, 26 A. (2) 155, 131 N. J. Eq. 527. Terms imposed upon petitioner as the condition of his obtaining equitable relief must consist of awarding or securing to the respondent something to which he is justly entitled by principles and doctrines of equity, although not perhaps by those of the common law. *Anderson v. Purvis*, 44 S. E. (2) 611, 211 S. C. 255; *Lindsey v. Clark*, 69 S. E. (2) 342, 185 Va. 991.

The petitioner here will be unjustly enriched if it gets back the plane without paying the repair charges and reasonable charges for storage. A court of equity will prevent unjust enrichment. *U. S. v. Adamant*, CCA, 9, 197 F. (2) 1; *Lewis v. Wisconsin Banking Commission*, 275 N. W. 429, 225 Wis. 606.

The bankrupt, prior to bankruptcy, and the Receiver, afterwards, were subject to rent charges for the premises upon which the plane was located. In the case of *in re John H. Parker Co.*, ND, Ohio, 45 ABR 34, 268 F. 868, it was held that the storage charges paid by a Receiver in Bankruptcy for the preservation of the property of a third person prior to the filing of a petition in reclamation by that person, and pending the determination of the Court upon the petition, should be paid by that petitioner. The amount charged should be reasonable and proportionate to the total rent charges for the premises.

The ruling here should follow the Parker case, in principle, since that ruling appears to be just and equitable. The actual amount of the storage charge, however, [22] should not be determined until after a special hearing, upon due notice to the reclamation petitioner.

V.

Conclusion

It appears to the Referee that it would be unconscionable if the petitioner were to get back its plane without paying the repair and reasonable storage charges. If petitioner does not pay it will fail to do the equity required and will be unjustly enriched. The bankruptcy court is not bound to follow the California law above cited when determining, as a matter of equity, what is the just and proper thing to do. It is true, as stated by Judge Yankwich of this court that contractual rights in bankruptcy are to be determined by state laws and the decisions determining them rather than by general bankruptcy principles. (In re Quartz Crystal Products, SD. Cal., 71 F. S. 949.) But here there is not any contractual relation between the petitioner and the bankrupt. Cal. Code Civ. Proc. Secs. 1208.61 and 1208.62, impose a statutory, not a contractual, liability on the owner of the plane. And petitioner, by leasing the plane to American Airways, placed the plane in the power of the American Airways to make needed repairs, particularly when it was ordered to do so by the U. S. Civil Aeronautics Authority. Petitioner would have had to make the

repairs itself before it could fly the plane again, if the bankrupt had not done so.

Counsel for the Receiver will, pursuant to General Rule 7a of this Court, prepare, serve and file appropriate findings of fact, conclusions of law and order.

Dated: May 21, 1954.

/s/ REUBEN G. HUNT,
Referee in Bankruptcy.

[Endorsed]: Filed May 21, 1954, Referee. [23]

[Title of District Court and Cause.]

FINDINGS OF FACT, CONCLUSIONS OF
LAW AND ORDER ON PETITION OF
RECLAMATION OF PROPERTY BY CO-
LONIAL TRUST COMPANY

This matter having come on for hearing on the verified "Petition of Reclamation of Property" of the Colonial Trust Company on March 30, 1954, at the hour of 2:00 p.m., thereof; and the petitioner having appeared by and been represented through its counsel Overton, Lyman, Prince & Vermille, by Dan Brennan, and the receiver, George T. Goggin, having appeared by and been represented through his counsel, Craig, Weller & Laugharn by C. E. H. McDonnell; and evidence, both oral and documentary, having been offered and received, the Referee

does now make the following Findings of Fact, Conclusions of Law and Order based thereon:

Findings of Fact

I.

The Colonial Trust Company (hereinafter referred to as "the petitioner") was at the time of the commencement of bankruptcy herein the legal owner of a C-46 aircraft, serial No. 2932, CAA certificate No. N-53472. The said aircraft was in the possession of the debtor herein at the commencement of [24] this proceeding by the filing of an involuntary petition in bankruptcy on February 3, 1954.

II.

On August 30, 1951, petitioner leased to American Airways, Inc., by written agreement, the C-46 aircraft involved in this litigation. By virtue of the said leasing agreement the lessee, American Airways, Inc., was under an obligation to keep the said aircraft in good repair at its own expense and at all times in an operable condition. The said American Airways, Inc., caused the aircraft to be operated as a passenger aircraft but later was required by the Civil Aeronautics Authority of the United States to ground said plane and make needed repairs thereon.

III.

On or about July 30, 1953, American Airways, Inc., grounded said plane pursuant to said requirement and entered into an oral agreement with the debtor corporation whereby the debtor corporation agreed to make the following necessary repairs: Re-

pair corrosion around bulkheads behind urinals, perform the mandatory modifications of the CO₂ fire control system, remove engines and work out "flight squawks" on the airframe. The debtor corporation performed the said work pursuant to the said oral agreement for a reasonable sum of \$10,843.59, no portion of which has been paid, and the same was due and owing at the date of the commencement of the within bankruptcy proceedings.

IV.

The work performed as aforesaid by the debtor corporation was of benefit to the aircraft and indispensable to the future operation of the aircraft, particularly since the same had been grounded by order of the Civil Aeronautics Authority of the United States for the purpose of having said repairs [25] made.

V.

The repairs were completed on or about September 4, 1953, and thereafter the plane remained in the possession of the debtor corporation and was in the possession of the debtor corporation at the commencement of these bankruptcy proceedings.

VI.

That it was customary for the debtor corporation to charge reasonable storage for aircraft left on its premises after the completion of work thereon.

VII.

The bankrupt corporation knew who held the legal title to the plane, but did not notify the Colonial Trust Company of the contemplated re-

pairs or get its written consent for the making of the repairs.

Conclusions of Law

I.

That the debtor corporation has an equitable lien against the C-46 aircraft, described as before, in the amount of \$10,843.59, which the petitioner in equity and good conscience must pay before surrender of possession of the aircraft to it.

II.

That the respondent must pay to the Receiver reasonable charges for the storage of said C-46 aircraft, the same to be later fixed by the Referee upon hearing after due notice.

Now, Therefore,

It Is Ordered that the petition of Colonial Trust Company herein be and the same hereby is granted, but that the receiver shall retain possession of the said C-46 aircraft, No. N-53472, until the payment to this estate of the sum of \$10,843.59, together with reasonable storage from and after [26] September 4, 1953, to the date when the plane is delivered into the possession of Colonial Trust Company, the amount and rate of such storage to be fixed and determined upon a hearing to be held before the Referee on notice to the petitioner Colonial Trust Company.

Dated: June 4, 1954.

/s/ REUBEN G. HUNT,
Referee in Bankruptcy.

[Endorsed]: Filed June 4, 1954, Referee. [27]

[Title of District Court and Cause.]

PETITION FOR REVIEW OF REFEREE'S
ORDER

To the Honorable Reuben G. Hunt, Referee in
Bankruptcy:

The petition of the Colonial Trust Company respectfully represents:

I.

This petitioner is the owner of aircraft #N-53472 having first appeared herein in a petition of reclamation for said aircraft filed March 12, 1954.

II.

That on the 4th day of June, 1954, an order was made by the Referee herein and filed in this court, a copy of which is hereto annexed marked Exhibit "A" and by this reference made a part hereof.

III.

The Colonial Trust Company being aggrieved by said order prays for a review thereof and complains that the court committed several errors in said order, more particularly set forth as follows: [28]

1. The court erred in concluding that the alleged bankrupt had an equitable lien on said aircraft for the reason that the evidence established.

(a) that the Colonial Trust Company was at all relevant times the legal registered owner of aircraft bearing Civil Aeronautics Administration Certificate #N-53472; and

(b) that the alleged bankrupt knew who held legal title, but failed to notify the Colonial Trust Company of the contemplated work or get its written consent thereto; and

for the further reason that the evidence established that the work was performed in the State of California at the request of and for the account of Air America, Inc., and/or United States Airlines and/or American Airways, Inc., and under the law of said State and of the United States neither the alleged bankrupt nor the Receiver has any lien claim in excess of \$250.00 against the aircraft itself. (See California Civil Code, sections 1208.61 and 1208.62.)

2. The court erred in failing to order the Receiver to release said aircraft to the possession of the Colonial Trust Company upon the payment of the sum of \$250.00 for the reason that that is the law of the case as set forth in California Civil Code, Sections 1208.61 and 1208.62.

3. The court erred in failing to hold that the alleged bankrupt had no lien on said aircraft in excess of \$250.00 for the reason that that is the law of the case as set forth in California Civil Code, Sections 1208.61 and 1208.62.

4. The court erred in making its finding that \$10,843.59 was a reasonable sum for the work performed by the alleged bankrupt for the reason that there was no evidence offered as to the reasonableness of the charges of the alleged bankrupt.

5. The court erred in finding that the work performed by [29] the alleged bankrupt "was of benefit to the aircraft and indispensable to the future operation of the aircraft, particularly since the same had been grounded by order of the Civil Aeronautics Authority of the United States for the purpose of having said repairs made" for the reason that there was no evidence offered in support of said finding.

6. The court erred in finding that repairs were completed on or about September 4, 1953, for the reason that the evidence shows that the work has not been completed and more particularly the evidence shows the engines have not yet been replaced on the aircraft.

7. The court erred in holding that the Colonial Trust Company must pay to the Receiver reasonable charges for the storage of said aircraft for the reason that the alleged bankrupt and the Receiver have and continue to retain possession of said aircraft against the will of the Colonial Trust Company, the legal owner thereof.

Wherefore, the Colonial Trust Company prays that said Order be reviewed by a Judge of this court and that the Referee promptly prepare and transmit to the clerk his Certificate thereon together with a statement of the questions presented and a transcript of the evidence taken at the hearing, together with all exhibits therein offered; and that said Order be vacated and set aside; and that an

Order be made and entered ordering the Receiver to surrender possession of said aircraft to the Colonial Trust Company upon the payment of the sum of \$250.00.

OVERTON, LYMAN, PRINCE &
VERMILLE,

By /s/ DAN BRENNAN,

Attorneys for Colonial Trust
Company.

Duly verified.

Affidavit of Service by Mail attached.

[Endorsed]: Filed June 9, 1954, Referee. [30]

[Title of District Court and Cause.]

CERTIFICATE ON REVIEW OF REFEREE'S
ORDER RELATIVE TO REPAIR AND
STORAGE CHARGES ON AIRPLANE

The undersigned Referee in Bankruptcy presents herewith to the Court his Certificate on Review of his order made and entered herein on June 4, 1954, requiring Colonial Trust Company, which had filed and prosecuted herein a petition to reclaim an airplane in possession of the Receiver in Bankruptcy, to pay certain repair and storage charges to the Receiver before the petition was granted and the airplane delivered to the Colonial Trust Company.

Craig, Weller & Laugharn, Attorneys for Receiver.

Overton, Lyman, Prince & Vermille, Attorneys for Petitioner.

I.

Statement of the Case

This is covered up to May 21, 1954, in the Referee's Memorandum Opinion filed in this matter on that date. Thereafter [36] and on June 4, 1954, the Referee signed, filed and entered his Findings of Fact, Conclusions of Law and Order on Petition of Reclamation on property by Colonial Trust Company. Thereafter, and on June 9, 1954, Colonial Trust Company filed its petition for a review by the Judge of the said order of the Referee.

II.

Question Presented

This is set forth in the Memorandum Opinion.

III.

Comment on the Evidence and the Law

This is also set forth in the Memorandum Opinion.

IV.

Findings of Fact, Conclusions of Law and Order

These are set forth in the Order entered herein on June 4, 1954.

V.

Documents Accompanying This Certificate

1. Petition of Reclamation of Property, filed Mar. 11, 1954.

2. Order to Show Cause, filed Mar. 12, 1954.
3. Answer to Petition of Reclamation of Property of Colonial Trust Company, filed Mar. 30, 1954.
4. Memorandum Opinion on Petition for Reclamation of Property on which Trustee Claims a Lien, filed May 21, 1954.
5. Findings of Fact, Conclusions of Law and Order on Petition of Reclamation of Property by Colonial Trust Company, filed June 4, 1954.
6. Petition for Review of Referee's Order, filed June 9, 1954.
7. All Exhibits received in evidence.
8. Reporter's Transcript of hearing on Mar. 30, 1954, filed Apr. 20, 1954.

Dated: June 9, 1954.

/s/ REUBEN G. HUNT,
Referee in Bankruptcy.

[Endorsed]: Filed June 9, 1954. [37]

[Title of District Court and Cause.]

MINUTES OF THE COURT—JULY 15, 1954

Present: Hon. Harry C. Westover,
District Judge.

Deputy Clerk: Mary O. Smith. Reporter: None.

Counsel for receiver: No appearance.

Counsel for petitioner: No appearance.

Proceedings:

The Petition of Colonial Trust Company for Review of Referee's Order of June 4, 1954, having heretofore been heard and submitted,

It Is Ordered that said Order be affirmed, counsel for Receiver to prepare formal order.

EDMUND L. SMITH,
Clerk;

By MARY O. SMITH,
Deputy Clerk. [38]

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice Is Hereby Given that the Colonial Trust Company hereby appeals to the United States Circuit Court of Appeals for the Ninth Circuit from the Order entered in the office of the Clerk of this Court on the 15th day of July, 1954, affirming the

Order of the Referee denying Petitioner's petition to reclaim certain property from the trustee.

Dated this 16th day of August, 1954.

OVERTON, LYMAN, PRINCE &
VERMILLE,

By /s/ DAN BRENNAN,
Attorneys for Colonial Trust
Company, Appellant.

[Endorsed]: Filed August 16, 1954. [39]

In the District Court of the United States for the
Southern District of California, Central Division

Bankruptcy No. 59,643-HW

In the Matter of

INTERCONTINENTAL AIRWAYS, INC., a Cor-
poration,

Bankrupt.

ORDER ON PETITION OF COLONIAL TRUST
COMPANY FOR REVIEW OF REFEREE'S
ORDER

This matter having come on for hearing on the verified petition for review of Colonial Trust Company on the 12th day of July, 1954, at the hour of 10:00 a.m. thereof; and the same having been submitted on briefs, and the court being fully advised in the premises,

Now, Therefore,

It Is Ordered that the petition of Colonial Trust Company to review the order of the Referee entered on June 4, 1954, fixing and determining that an equitable lien in favor of the respondent bankrupt estate exists against that certain C-46 Airplane No. 2932 be and the same hereby is denied, and the said order be and it hereby is affirmed; and

It Is Further Ordered that by this order this court does specifically adopt as its own the Findings of Fact, Conclusions of Law and Order made and entered by the said Referee on the said [42] matter on June 4, 1954.

Dated: Aug. 31, 1954.

/s/ HARRY C. WESTOVER,
United States District Judge.

Receipt of copy acknowledged.

[Endorsed]: Filed August 31, 1954.

Docketed and entered September 3, 1954. [43]

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice Is Hereby Given that the Colonial Trust Company has appealed to the United States Circuit Court of Appeals for the Ninth Circuit from the Order entered in the office of the Clerk of this Court on the 15th day of July, 1954, and hereby appeals to the United States Circuit Court of Appeals for the Ninth Circuit from the Order entered in the Office of the Clerk of this Court on the 3rd day of September, 1954, which Orders affirmed the Order of the Referee denying Petitioner's petition to reclaim certain property from the trustees.

Dated this 14th day of September, 1954.

OVERTON, LYMAN, PRINCE
& VERMILLE,

By /s/ DAN BRENNAN,
Attorneys for Colonial Trust
Company, Appellant.

Affidavit of Service by Mail attached.

[Endorsed]: Filed September 14, 1954. [44]

[Title of District Court and Cause.]

STIPULATION FOR EXTENSION OF TIME
WITHIN WHICH TO FILE AND DOCKET
RECORD ON APPEAL

It Is Stipulated and Agreed by and between the attorneys for the parties hereto that the Petitioner-Appellant, Colonial Trust Company, may have to and including the 12th of November, 1954, in which to file the record and docket the above-entitled cause in the United States Court of Appeals for the Ninth Circuit.

Dated this 13th day of September, 1954.

OVERTON, LYMAN, PRINCE
& VERMILLE,

By /s/ DAN BRENNAN,
Attorneys for Colonial Trust Company, Petitioner-Appellant.

CRAIG, WELLER &
LAUGHARN.

By /s/ C. E. H. McDONNELL,
Attorneys for Receiver-Appellee.

It Is So Ordered this 14th day of September, 1954.

/s/ HARRY C. WESTOVER,
United States District Judge.

[Endorsed]: Filed September 14, 1954. [55]

In the District Court of the United States for the
Southern District of California, Central Division

In Bankruptcy No. 59,643-HW

In the Matter of:

INTERCONTINENTAL AIRWAYS, INC., a Cor-
poration,

Debtor.

REPORTER'S TRANSCRIPT OF HEARING
ON ORDER TO SHOW CAUSE, COLONIAL
TRUST COMPANY VS. RECEIVER, HELD
ON TUESDAY, MARCH 30, 1954, AT 2
O'CLOCK P.M.

Appearances:

For the Receiver:

CRAIG, WELLER & LAUGHARN, By
C. E. H. McDONNELL, ESQ.

For the Petitioner, Colonial Trust Co.:

OVERTON, LYMAN, PRINCE &
VERMILLE, By
DAN BRENNAN, ESQ.

* * *

Mr. McDonnell: There is one matter on the cal-
endar, the Colonial Trust Company. That is a peti-
tion in reclamation lodged against this estate. [2*]

* * *

*Page numbering appearing at top of page of original Reporter's
Transcript of Record.

The Referee: There is no question about the title?

Mr. McDonnell: None whatsoever.

The Referee: The only question is whether this estate can assert a lien? [3]

Mr. McDonnell: That is right. [4]

* * *

Mr. Brennan: The first exhibit is a lease dated August 30, 1951, with a certificate by the Vice President of the Colonial Trust Company that the document is an exact duplicate of the original.

The Referee: That will be Petitioner's Exhibit No. 1.

Mr. Brennan: The second in order is a photostat of a trust certificate dated August 30, 1951, to which is attached a certificate of the Vice President of the Colonial Trust Company certifying this photostat to be an exact duplicate of the original.

The third is a photostat of the Certificate of Registration issued by the Administrator of the Civil Aeronautics Administration, dated December 3, 1951, and the original of which is on the aircraft as required by law.

The fourth item is a letter of the Colonial Trust Company dated March 5, certifying that it has not disposed of the aircraft and is the owner at this time.

The fifth is a notice of the Colonial Trust Company, dated December 12, addressed to Air America, Inc., notifying Air America, Inc., of the defaults

under the lease and demanding the immediate possession of this aircraft and the surrender of the aircraft and so on.

The sixth and last item is a letter of Air America, Inc., dated January 29th, addressed to Colonial Trust Company, acknowledging the default and agreeing that the Colonial Trust Company is entitled to the possession of this [9] aircraft.

All of these deal with Aircraft No. 53472.

* * *

A. W. SCHWIMMER

called as a witness on behalf of the Receiver, being first duly sworn, testified as follows: [10]

Direct Examination

By Mr. McDonnell:

Q. Mr. Schwimmer, are you acquainted with the alleged bankrupt here? A. I am.

Q. Are you an officer? A. The president.

Q. And are you acquainted with a C-46 aircraft, No. N-53472? I believe it was being operated by Air America. Do you know about that aircraft?

A. Yes.

Q. And do you know about the maintenance work that was done and the repair work that was done on it? A. Yes.

Q. Did you make the contract or the arrangements for that, Mr. Schwimmer? A. I did.

Q. Where were you when you made the arrangements? A. In New York.

(Testimony of A. W. Schwimmer.)

Q. And with whom did you deal in New York?

A. I dealt with Mr. Shore of Air America, Mr. Miller of Air America and U. S. Air Lines, and Mr. Rich.

Q. Is that R-i-c-h? A. Yes.

Q. Is he also known as Donald R-e-i-c-h-g-o-t-t?

A. Yes. [11]

Q. Was the agreement in writing?

A. No, the agreement that we made was verbal.

Q. All right, and would you relate in general what that agreement was?

A. Well, Intercontinental was doing the maintenance on this aircraft. The airplane had a considerable amount of corrosion back in the rear bulkhead behind the urinals, and the CAA had permitted it to be flown only up until the next heavy operational check, at which time all the structure back there had to be torn out and replaced, rebuilt.

There was also at that time a mandatory modification to the fire control system, the CO₂ system, coming up for all C-46s. So it was the desire of Mr. Shore and Mr. Miller and Mr. Rich that all of this work be done at one time. The airplane was flown into Burbank on one of its routine flights and grounded and the work was done.

Q. Do you know about when that was that it was brought into Burbank?

A. I believe in July or August of last year.

Q. Late in July or early August, somewhere around the 29th?

A. Somewhere around there, yes.

(Testimony of A. W. Schwimmer.)

Q. And was there also some agreement to do some of the other work on the engines, like removing the engines?

A. As I recall, there were quite a few jobs that were done, removal of the engines and some interior work and [12] other odds and ends.

Q. I see. May I ask you this, was there some connection between United Air Lines and Air America, to your knowledge, Mr. Schwimmer?

A. United Air Lines?

Q. U. S. Air Lines, rather.

A. Yes, to the best of my knowledge Mr. Miller, who is the president or was the president of U. S. Air Lines was the major stockholder of Air America, and I believe Chairman of the Board as well.

Q. What I am trying to get at is this, did U. S. Air Lines sometimes use this aircraft N-53472?

A. Yes, for a time they had it on a sublease with Air America.

Q. Was your agreement concerning the repair of this corrosion and compulsory modification, was that with Air America or U. S. Air Lines?

A. That was with Air America.

Q. I see. All right. I am going to show you Work Order No. 601 on the letterhead of Intercontinental Airways, Inc., and ask you if that is for an airplane, C-46-F, and ask you if that is the work order, if you can identify it as the original of the work order for the correction of the corrosive condition behind the lavatory? Is that the work order?

(Testimony of A. W. Schwimmer.)

A. Yes, this is. [13]

Mr. McDonnell: I will offer this as Trustee's Exhibit first in order, Respondent's first in order.

Q. I will show you another work order, No. 602, dated July 30, 1953, on the letterhead of Intercontinental Airways Inc., for some work on a C-46-F—I notice these are "NC" and then "472." Is that a——

A. Well, "NC" means that it is a U. S. commercially licensed aircraft, and the 472, it is very common in the industry to use just the last three digits of the license number of the aircraft.

Q. Then this could refer to N-53472?

A. It does refer to that.

Q. And can you identify this as the work order on the work you were requested to do?

A. Yes.

Mr. McDonnell: I will offer this as the next exhibit in order.

The Referee: All right, Receiver's Exhibit 2.

Q. (By Mr. McDonnell): I will lay before you Invoice No. 1252 dated August 31, 1953, for \$3,352.50. It refers to Work Order 602. Is that a copy of the billing to Air America for the installation of the CO₂ system that had to be installed?

A. It is.

Mr. McDonnell: I will offer that as the Receiver's Exhibit next in evidence. [14]

Q. I will lay before you Invoice No. 1253, referring to Work Order No. 601, which is in the

(Testimony of A. W. Schwimmer.)

total amount of \$6,013.03 for repair of corrosion on Aircraft NC-53472. Is that a copy of the invoice sent to Air America in connection with the repair of the corrosion that you have discussed before?

A. Yes.

Mr. McDonnell: I will offer that as the Receiver's next in order.

Q. Finally, I lay before you a bill dated 11-20-53 for \$1,478. Now, this is billed to U. S. Air Lines, and I want to ask you if you recognize that invoice? Do you recall that matter? Let me withdraw that question and lay before you—I am sorry, counsel. You didn't see that. This is the work order. I will let you inspect that work order, Mr. Schwimmer.

A. Yes, that will help me.

Q. I will lay before you a copy of Work Order No. 600 on the letterhead of Intercontinental Airways, Inc., addressed to U. S. Air Lines, for work on NC-472. Again it is only the last three digits. Do you recall that work on Aircraft No.—well, I suppose it is 53472?

A. Yes. I believe that these engines—I am afraid this is hazy in my mind. I don't recollect that.

Q. You don't recall whether the work was done or not?

A. No, frankly I don't. I might have gone on a trip [15] or something.

Q. Do you know anybody in your organization that would know about it?

A. Mr. Dicek should know if I don't.

(Testimony of A. W. Schwimmer.)

Mr. McDonnell: All right. That is all the questions I have.

Cross-Examination

By Mr. Brennan:

Q. Mr. Schwimmer, what is your position with Intercontinental Airways, Inc.?

A. The president.

Q. And how long have you been president?

A. Since its inception, five years.

The Referee: Just a moment. Have you got a voucher of any kind for the \$1,478.06?

Mr. McDonnell: That is the matter I was going to offer but Mr. Schwimmer couldn't identify the copy or the work order. I have both copies here.

Q. (By Mr. Brennan): And who is Mr. Lutomski, who signed the work orders?

A. He was our Chief of Maintenance.

Q. I notice on both of these work orders that there is a notation there, "Credit approved," and it is initialed. Whose initials was that?

A. I don't know. What are the initials?

Q. I don't know. [16]

A. I could perhaps identify them by looking.

The Referee: Where are these initials?

The Witness: That would be on the work order, your Honor.

Mr. Brennan: That is halfway down on the other side, "Credit approved," and there is a line and initials written in.

The Witness: This could be Mr. Dicek.

(Testimony of A. W. Schwimmer.)

Q. (By Mr. Brennan): And what does that indicate? What is the significance of the approving of credit?

A. Well, just a matter of form that the work not be started by the people on the line, but in this case the work order was authorized by Mr. Lutomski, who was the Chief of Maintenance, until the credit approval had been filed.

Q. More specifically, doesn't that mean that your company undertaking this work was doing it on the credit of Air America, in reliance on the credit of Air America?

A. No, it doesn't mean any such thing. What it actually means is that there is some arrangement for this work to be done. It doesn't necessarily settle any of the conditions of how on the form itself.

Q. All right, what arrangements had been made?

A. With Air America?

Q. Yes. You mean just the ordering of the work, is that what you have in mind?

A. Yes, the work was ordered. [17]

The Referee: How about that Aviation Export matter?

The Referee: All right, go ahead, Mr. Brennan.

Q. (By Mr. Brennan): Now, were any payments made on this work that was done?

A. No, I don't believe so.

Q. Well, have you checked your records to ascertain whether or not payment was made?

A. Payment was not made.

(Testimony of A. W. Schwimmer.)

Q. Did you do any other work for Air America on this craft after it was delivered to you?

A. We did quite a bit of work on this aircraft many times.

Q. Did you do any after——

A. We were maintaining it.

Q. Did you do any work after July, 1953?

A. No, this work was the last work we did on it.

Q. Didn't you receive a payment of approximately \$10,000 from Air America after July for this work?

A. Not to my knowledge, no.

Q. Did anyone of your company give notice to Colonial Trust Company that any of this work was being performed?

A. I don't believe so. [18]

Q. Did Colonial Trust Company consent in writing or otherwise to the performance of any of this work?

A. Not to my knowledge.

Q. And as far as you know, Colonial Trust Company had no knowledge this work was being performed?

A. I had no dealings with Colonial Trust Company.

Q. As far as you know, they had no knowledge that the work was being done?

A. That is correct.

Mr. Brennan: That is all.

(Testimony of A. W. Schwimmer.)

Redirect Examination

By Mr. McDonnell:

Q. Mr. Schwimmer, when you discussed this matter with the officials of Air America, did you discuss the storage of the aircraft after the work was done?

A. No. You see, this work was finished around in August or in the early part of September, and in the early part of September I left the United States and I was gone for six months. The storage accrued after that.

Q. Do you know what the policy of your company was in connection with the storage of aircraft left on your premises after the work had been completed?

A. Yes, there is a storage charge.

Q. What is that storage charge, do you know?

A. Well, Mr. Dicek would know that better than myself. [19]

Q. And as far as you know was this work actually performed on this aircraft?

A. The work was completely done and approved by the CAA and finished and signed off on the paper work.

The Referee: You haven't proved that third item.

Mr. McDonnell: I know that, your Honor. That is all.

The Referee: You are excused.

Mr. McDonnell: I would like to call Mr. Sosnow.

W. SOSNOW

called as a witness on behalf of the Receiver, being first duly sworn, testified as follows:

Direct Examination

By Mr. McDonnell:

Q. Mr. Sosnow, were you working at Intercontinental Airways out at Lockheed during the latter half of 1953? A. Yes, sir, I was.

Q. Are you acquainted with a C-46 No. N-53472?

A. I am.

Q. Are you acquainted with the work done on that aircraft? A. I think so.

Q. Are you acquainted with some engine work done in connection with that aircraft?

A. Yes, I am.

Q. What was that work?

A. Well, when the aircraft came in it came in with [20] engines out of time, run-out engines.

Q. Would you explain to the Judge what you mean by run-out engines?

A. Well, the plane has a maximum time allowable for running the engines before an overhaul. On this plane this time had already run out.

Q. All right, go ahead. What happened then?

A. And at that time the tail corrosion was taken care of and the CO₂ system was taken care of, and the arrangement was made whereby the engines would have to be pulled anyhow for new engines to be put on, and it would also facilitate the doing of the CO₂ system. So the engines were agreed to be

(Testimony of W. Sosnow.)

taken care of, and the flight squawks were taken care of, and then all that was left to be done on the aircraft was the corrosion and the CO₂ system and the swinging of a couple of new engines.

Q. Did Intercontinental Airways in fact to your knowledge remove the aircraft engines and work off the flight squawks? A. Yes, sir.

Q. I will show you Work Order No. 600 and ask you if you can identify the signatures at the bottom of the same? A. Yes, I can.

Q. And is that the work order in connection with the removal of the engines and the flight squawks? A. That is right. [21]

Mr. McDonnell: I will offer that as the Receiver's Exhibit next in order.

I will show you a billing in the amount of \$1,478.06 and ask you if that is to your knowledge the billing for the removal of the engines and the flight squawks? A. And the outside work.

Mr. McDonnell: I will offer that.

That is all I have of Mr. Sosnow.

The Referee: All right, cross-examination.

Cross-Examination

By Mr. Brennan:

Q. To whom was your bill for that work done on the engines, and which you described as working off the flight squawks, billed?

A. Well, it should state on the invoice.

(Testimony of W. Sosnow.)

Mr. McDonnell: I will stipulate that it was billed to U. S. Air Lines.

Q. (By Mr. Brennan): Do you know why it was billed to U. S. Air Lines?

A. No, offhand I don't.

The Referee: I don't get the connection of U. S. Air Lines here, counsel. What is it? This agreement is with Air America.

Mr. McDonnell: I will offer a letter in just a moment which will clarify it. Apparently the aircraft had been under a sublease with U. S. Air Lines and through [22] inadvertence they billed U. S. Air Lines instead of Air America after it had been returned to Air America.

Q. (By Mr. Brennan): Were these engines ever returned to the aircraft?

A. No, they weren't.

Q. Are they off at this time? A. Yes.

Q. The work was not finished then? You did not complete the work?

A. We completed the removal of the engines. We weren't supposed to put new engines on until they supplied them.

Q. What did you do, overhaul these two engines for the purpose of——

A. No, they are still out there.

Q. Then I don't understand what you mean by working off flight squawks.

A. Working off flight squawks on the aircraft frame in general.

Q. You didn't do any work on the engines ex-

(Testimony of W. Sosnow.)

cept removal? A. Except removal.

Mr. Brennan: That is all.

Mr. McDonnell: That is all I have. I would like to recall Mr. Schwimmer at this time. [23]

A. W. SCHWIMMER

recalled, testified further as follows:

Direct Examination

By Mr. McDonnell:

Q. I am going to show you a letter dated November 27, 1953, on the letterhead of U. S. Air Lines, and ask you if you recognize the signature at the bottom of it? A. Yes, I do.

Q. And is that the signature of Rene Stanton?

A. Yes.

Q. And to your knowledge is he connected with U. S. Air Lines? A. He was at that time, yes.

Mr. McDonnell: I will offer that as the Receiver's Exhibit next in order.

That is all I have of Mr. Schwimmer.

Mr. Brennan: No questions.

Mr. McDonnell: That is all I have, your Honor.

The Referee: Have you anything further?

Mr. Brennan: No, your Honor.

* * *

[Endorsed]: Filed April 20, 1954, Referee. [24]

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

I, Edmund L. Smith, Clerk of the United States District Court for the Southern District of California, do hereby certify that the foregoing pages numbered from 1 to 55, inclusive, contain the original Creditors' Involuntary Petition; Order of General Reference; Approval of Debtor's Petition and of Reference Under Section 321 of the Bankruptcy Act; Petition of Reclamation of Property Order to Show Cause; Answer to Petition of Reclamation of Property; Memorandum Opinion of Referee; Findings of Fact, Conclusions of Law and Order on Petition of Reclamation of Property by Colonial Trust Company; Petition for Review of Referee's Order; Certificate on Review of Referee's Order Relative to Repair and Storage Charges on Airplane; Separate Notices of Appeal and Bond for Costs on Appeal filed Aug. 16, 1954, and September 14, 1954, respectively; Order on Petition of Colonial Trust Company for Review of Referee's Order; Statement of Points on Appeal; Designation of Record on Appeal and Stipulation and Order Extending Time to Docket Appeal and a full, true and correct copy of Minutes of the Court for July 15, 1954, which together with reporter's transcript of proceedings on March 30, 1954, and original Receiver's Exhibits 1 to 7, inclusive, and petitioner's exhibits 1 to 6, inclusive, transmitted herewith constitute the transcript of record on appeal to the

United States Court of Appeals for the Ninth Circuit.

I further certify that my fees for preparing and certifying the foregoing record amount to \$2.00 which sum has been paid to me by appellant.

Witness my hand and the seal of said District Court this 21st day of October, A.D. 1954.

[Seal] EDMUND L. SMITH,
Clerk;

By /s/ THEODORE HOCKE,
Chief Deputy.

[Endorsed]: No. 14557. United States Court of Appeals for the Ninth Circuit. Colonial Trust Company, Appellant, vs. George Goggin, Trustee in Bankruptcy of the Estate of Intercontinental Airways, Inc., Appellee. Transcript of Record. Appeal from the United States District Court for the Southern District of California, Central Division.

Filed October 22, 1954.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for the
Ninth Circuit.

United States Court of Appeals
for the Ninth Circuit

No. 14557

COLONIAL TRUST COMPANY,

Appellant,

vs.

GEORGE T. GOGGIN and INTERCONTI-
NENTAL AIRWAYS, INC., a Corporation,

Appellees.

APPELLANT'S STATEMENT OF
POINTS ON APPEAL

The Colonial Trust Company, Appellant herein, presents herewith the points upon which it intends to rely in support of its contention that the District Court erred:

1. In holding and deciding that the debtor corporation had an equitable lien against the aircraft involved in this action.

2. In affirming the Referee's Order of June 4, 1954.

3. In failing to Order the Receiver to surrender possession of the aircraft involved to the Colonial Trust Company.

4. In failing to hold that the Colonial Trust Company is entitled to possession of the aircraft involved upon the payment of the sum of \$250.00 to the Receiver.

5. In holding and deciding that \$10,843.59 was a reasonable charge for the work performed by the debtor corporation on the aircraft involved.

6. In holding and deciding that the debtor corporation has an equitable lien against the aircraft involved in the amount of \$10,843.59, plus storage charges in an undetermined amount.

7. In holding and deciding that the Receiver of the debtor corporation shall retain possession of the aircraft until a payment is made to the estate in the sum of \$10,843.59 together with reasonable storage charges from and after September 4, 1953.

8. In finding that the Civil Aeronautics Authority of the United States required that the debtor corporation make the repairs which are the basis for its claim of lien.

Dated October 27th, 1954.

OVERTON, LYMAN, PRINCE
& VERMILLE,

By /s/ DAN BRENNAN,

Attorneys for Colonial Trust
Company, Appellant.

Affidavit of Service by Mail attached.

[Endorsed]: Filed October 29, 1954.